IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI.REVISION APPLICATION NO. 121 OF 2004
IN
Cri.Appln. No. 25/2004
IN
SPECIAL CASE NO. 96 OF 2003

Mr. R. Krishnamachari .. Petitioner.

V/s.

1. Central Bureau of Investigation
2. The State of Maharashtra .. Respondents.

Mr. S.G. Deshpande for Applicant/Petitioner.
Mrs. Manjula Rao and Mr. Tejus Mujumdar, Spl.Counsel for C.B.I.
Mr. B.H. Mehta, APP for the State.

WITH
CRI. REVISION APPLICATION NO. 125 OF 2004
IN
Spl.Sessions Case No.73/1998

Mr.Jitubhai R. Shroff .. Applicant.

V/s.

1. State of Maharashtra
2. Central Bureau of Investigation .. Respondent.
(Through BS & FC)

Mr. Girish Kulkarni for Applicant.
Mr. B.H. Mehta, APP for the State.
Mrs. Manjula Rao and Mr. Tejus Mujumdar, Spl. Counsel for C.B.I.

CORAM : A.S. AGUIAR, J.
DATED : 30.08.2004 &
31.08.2004

PC :-

1. The Petitioner/ Applicant in Cri. Revision Application No. 121 of 2004, applies for discharge in Special Case No.96/2003 and for setting aside the order dated 23rd February, 2004 passed by the CBI Special Court, rejecting his application for discharge.

2. Similarly, the Petitioner/ Applicant in Cri. Revision Application No. 125 of 2004, applies for discharge in Special Case No. 73/1998 and for setting aside order dated 23rd February, 2004 passed by the CBI Special Court, rejecting his application for discharge.

3. The Applicant Jithubhai R. Shroff in CRA No. 125/2004 has been charged by the Special Court for the offences under section 120-B of Indian Penal Code, read with Sections 409, 420 IPC and under Section 13(2), read with S. 13(1)(d) of the Prevention of Corruption Act, 1988. It is the case of the prosecution that present Appilcant - Jitubhai R.

Shroff in conspiracy with Accused No.2 Shri V.N. Deosthali, Assistant Manager of UCO Bank, Hamam Street Branch, had entered into a criminal conspiracy to divert illegally the funds of LIC Mutual Fund to the extent of Rs. 25 Crores into UCO Bank to the account of Shri Harshad S. Mehta, since deceased, in the said branch of UCO Bank. The said transaction was illegal, as it resulted in undue pecuniary advantage to Harshad S. Mehta. The said diversion of funds was for the period of 7 days from 02.07.1990 to 09.07.1990. The said diversion of the funds was done under the garb of fradulent security transaction on a Ready - Forward Basis. The said transaction is also known as Ready Forward Transaction. In the said transaction, LIC Mutual Funds purchased 13% NPC Bonds (Nuclear Power Corporation Bonds) of the face value of Rs. 25 crores through the Applicant. The transaction was initiated on 02.07.1990 by the Applicant, dishonestly showing contract note of the same date, in respect of purchase of 13% NPC Bonds of the face value of Rs. 25 crores at the rate of Rs. 101/- for LIC Mutual Fund. On the said date i.e. on 2.7.1990, the applicant also issued a false delivery order of the same date to LICMF, instructing them to receive the delivery of the bonds from UCO Bank, Hamam Street Branch, Mumbai. The

applicant on the same day also issued a similar delivery order dated 2.7.1990 to UCO Bank, instructing them to deliver the bonds to LIC Mutual Fund. On the same day i.e. on 2.7.1990, Shri V.N. Deosthali, co-accused, issued a cost memo dated 2.7.1990 in respect of the aforesaid sale of bonds for a total value of Rs. 26,12,26,027.40/-.

4. It is the prosecution case that the Applicant and Harshad Mehta, since deceased, had current accounts numbers 883 and 1028 respectively in UCO Bank, Hamam Street Branch, Mumbai where V.N. Deosthali, was the then Assit. Manager. Shri V.N. Deosthali, without any authority credited cheques for the sum of Rs. 26,11,36,986.30/- and Rs. 89,041.10/- into the account of Harshad S. Mehta. The said cheques were Banker’s Cheques issued by the Central Bank of India on behalf of LICMF in favour of the UCO Bank. It is the case of the prosecution, that co-accused Deosthali, had no instructions from Central Bank of India nor was he authorised to credit the above amount into the account of Harshad S. Mehta. It is contended that despite the delivery orders dated 2.7.1990 issued by the applicant to LIC Mutual Funds, instructing them to receive the delivery of the bonds

from UCO Bank and aslo directing the UCO Bank to deliver the bonds to LICMF, in fact there was no delivery of bonds either by the applicant broker or by the UCO Bank to the LICMF. It is further contended that the cost memo dated 2.7.1990 issued in respect of the aforesaid sale of bonds for a total value of Rs. 26,12,26,027.40/- is false and in fact, the UCO Bank had no such transactions with the LICMF. It is submitted that the cost memo does not indicate physical delivery of bonds or BRs. It is the contention of the prosecution that the aforesaid transaction of sale of bonds infact never took place and that the said transaction was purely on paper and a false contract note was issued showing sale of 13% NPC Bonds of face value of Rs. 25 crores @ Rs. 100.9711 to the LICMF through the instrumentality of the applicant, who acted as broker. It is further submitted that this first part of the transaction, was the "ready leg" of the "Ready -Forward" transaction. The Supreme Court has in the case of the Bank of India Finance Ltd., vs. The Custodian and Ors. , reported in AIR 1997 SC 1952, held that spot delivery of the securities is the essence of the "Ready-leg" or first leg of the transaction. The full and absolute ownership of the title in securities vests in the

purchaser, as the entire property in the security passes immediately upon such delivery and payment, upon which the seller is divested of all rights, title and interest in the said securities.

5. It is submitted that the said transaction was for a period of 7 days from 2.7.1990 to 9.7.1990. On 9.7.1990 the entire transaction underwent a reverse process, and LIC Mutual Fund purportedly sold back the 13% NPC Bonds of face value of Rs. 25 crores through the Applicant. On 9.7.1990, being the date of reversal of the said transaction, the applicant issued contract note dated 9.7.1990, showing sale of 13% NPC Bonds of face value of Rs. 25 crores @ Rs. 100.9711 on behalf of the LICMF. The applicant on the same day issued the delivery order dated 9.7.1990 to LICMF, instructing them to deliver the said bonds to UCO Bank at the rate indicated in the said contract note. On the same day Mr. V.N.Deosthali, debited account of Harshad S. Mehta for an amount of Rs. 26,13,44,434.59/- and Rs. 4,45,205.48/- respectively and the said amounts were credited to the current account of the Applicant's A/c., in the same branch of UCO Bank. Thereafter, the account of Applicant was debited with the said amount by Shri Deosthali and

payment was made to the LICMF by two banker's cheques dated 9.7.1990 for Rs. 26,13,859.59 and Rs. 4,45,205.48/- respectively, which were credited to account of LICMF with Central Bank of India, Churchgate Branch, Mumbai on the same day i.e. on 9.7.1990. This reverse transaction falls in the second category, which is also called the "Forward Leg" of the "Ready-Forward" transaction. The Supreme Court in the aforesaid case, observed that the "forward leg" is to be performed at a later date. On the stated price being paid, the securities are to be delivered back when the title in interest therein would pass to the original seller.

6. In the present case, the said transaction is illegal as admittedly, there was no delivery of the bonds and when there was no physical delivery of the securities, the question of issuing BRs does not arise. In support of its contention, the prosecution has referred to the statement of Smt. Abhan Falee Bilimoria, witness No.3, who was at the relevant time working as a Junior Executive in the Investment & Finance Department in the LIC Mutual Fund, Miss Bilimoria has stated that she was directly connected with the preparation of the calculation sheet of the

transaction, in respect of purchase of 13% of the NPC Bonds for Rs. 25 crores @ 11% for 7 days, from UCO Bank through V.B. Desai on 2.7.1990. She has identified her handwriting on the said calculation sheet. She further stated that the remark "Receipt in safe" means that the BR was kept in the safe (locker) and it does not mean that the physical bonds were received. She further stated that "in respect of Ready Forward Transaction,which was for a few days only, we used to receive BRs only. I do not remember having received bonds for any such transaction".

7. A reference is also made to the statement of one Dinesh Mishra, prosecution witness No.15, who at the relevant time was DGM (Treasury & Investment Management Department) UCO Bank, Mr. Mishra has stated as follows :-

> "UCO Bank was not acting as depository for its clients, neither in 1990 nor today. We were not holding any type of securities on behalf of either Harshad S. Mehta, V.B. Desai or R.K. Chari and other brokers/ Clients.".

He further stated "The BRs could also not be issued for client's deals by V.N. Deosthali, as UCO Bank was not having any security with them".. Further reference is made to the documents Exhs. D-67 and D-68 at pages 154 and 155, respectively, being letters addressed by the Dy. General Manager, UCO Bank, to the CBI. The letter dated 14th May, 1998 clearly states that the Bank had no holding of NPC and NHPC bonds on Head Office (Investment) A/c., during the months of July and August, 1990. Hence the stock position on 2.7.1990 in respect of NPC bonds and on 31.7.1990 for NHPC bonds was to be treated as 'Nil'. The letter further states that Hamam Street, Mumbai Branch of UCO Bank, was undertaking clients transactions, on their behalf, in PSU bonds/securities etc. during the relevant period.

8. Letter dated 20.05.1998, Exh. D-68, at page 155, states that V.N.Deosthali, Officer, UCO Bank, Hamam Street Branch was not authorised by Head Office (T & IM) Department to undertake following deals with LICMF :-

1. Sale of 13% NPC Bonds face value Rs. 25/- crores on 2.7.1990 and purchase of the same

bonds on 9.7.1990.

2. Sale of 9% NHPC Bonds face value Rs. 20/- crores on 31.7.1990 and purchase of the same bonds on 10.8.1990.

Also the Bank's Head Office did not authorise said Shri V.N. Deosthali of Hamam Street Branch,, Mumbai to issue BRs of UCO Bank, even in respect of securities deals of its clients.

9. Hence it is submitted that the transaction effected through the instrumentality of the Applicant-broker- Shri Jitubhai R. Shroff, was a fraudulent transaction based on mis-representation for the purpose of causing unlawful gain to said Harshad Mehta. It is pointed out that the contract notes in respect of the transaction under reference, were admittedly issued by the Applicant. Said transaction and the other documents establish that the Applicant was fully aware that although no bonds were physically delivered, they were shown as issued under the signature of the applicant and as such there was in fact no transaction. These bonds could not be traced

either with the LIC Mutual Fund nor with the UCO Bank. The said transaction is therefore, a transaction without security. It is contended that the bonds mentioned in the documents, which are shown to have been delivered, were not found either in the LIC Mutual Fund nor in UCO Bank. The Applicant, therefore, obtained a wrongful gain without a genuine trade transaction. It is further contended that the document at D-36, delivery order dated 2nd July, 1990 is signed by late Shri Harshad Mehta, deceased. The said document i.e. the delivery order to UCO Bank, states "Please deliver to M/s. V.B. Desai, 13% NPC Bonds". The document Exh.D-23 at page 95, which is on the letter head of the Applicant is an order addressed to LIC Mutual Fund to deliver to UCO Bank, Rs. 25 Crores, 13% NPC bonds @ 100/9791 This, according to the prosecution, establishes the complicity of the of the Applicant in the offer since he was fully aware that there were no bonds and yet instructed LIC Mutual Fund to deliver the 13% NPC Bonds to UCO Bank. It is contended that the delivery of bonds sought to be effected by issuing contract notes in respect of the transaction, when infact the securities in question, were non-existent, amounted to fraudulent mis-representation on the part of the applicant.

10. Coming to the case of the prosecution in Criminal Revision Appln. No. 121/2004, the facts therein are identical to the above stated facts in Cri. Revision Application No. 125/2004 except that the transaction took place on 31.7.1990, when LICMF purchased 9% NHPC bonds of the face value of Rs. 20/- crores through the petitioner and on the same day, the petitioner issued a contract note dated 31.07.1990, showing purchase of 9% NHPC bonds of Rs. 20/- crores at the rate of 101.50 for LIC Mutual Fund. (Strangely, on the same day, the petitioner issued the contract note dated 31.7.1990, showing sale of the 9% NHPC Bonds of the face value of Rs. 20/- crores at the rate of Rs. 101.5370/- for LICMF on 10.08.1990). On the same day, the petitioner issued deliver order dated 31.7.1990 to UCO Bank, instructing them to deliver the bonds to LICMF. The said transaction of sale of said bonds for and on behalf of the LIC Mutual Funds through UCO Bank is reflected in contract note dated 31.7.1990 at Exh.D-49 at page 128 and the delivery notes and documents at page 118 Exh.D-4, being the delivery note dted 31.7.1990 in favour of UCO Bank, to the account of Harshad Mehta.

11. On 31.7.1990, the petitioner also issued a delivery note to LICMF, instructing it to receive bonds from UCO Bank. The petitioner also issued deliver order to UCO Bank, instructing them to deliver bonds to LICMF. On the same day i.e. 31.7.1990, V.N.Deosthali, dishonestly issued a cash memo dated 31.7.1990 in respect of aforesaid sale of bonds for a total value of Rs. 20,91,15,068.49/-. In the present case also the petitioner and Shri Harshad Mehta had current accounts bearing No. 1208 and 1208 respectively in the UCO Bank, Hamam Street Branch, Mumbai, where the co- accused Deosthali, was the then Assistant Manager and the said Deosthali had credited cheque for the sum of Rs. 20,91,15,068.49/- into the account of Harshad Mehta. The said cheque was a banker’s cheque issued by the Central Bank of India on behalf of LICMF in favour of the UCO Bank. This was the first leg of the transaction that is the Ready Leg. On 10.08.1990, there was a reversal of the transaction in which the LICMF sold 9% of NHPC Bonds of the face value of Rs. 20 crores through the petitioner. As ponted out earlier, the petitioner had issued a contract note dated 31.7.1990, showing sale

of 9% NHPC Bonds of the face value of Rs. 20 crore at the rate of 101.5370/- on behalf of the LICMF on 10.8.1990.

12. On 10.8.1990, the petitioner also issued delivery order dated 10.8.1990 to LIC Mutual Fund , instructing them to deliver the said bonds to UCO Bank at the rate indicated in the said contract note. The note is at Exh.D-50, page 125 of the paper book in Revision Application No. 121/2004. On 10.8.1990, co-accused Deosthali debited account of Harshad Mehta for an amount of Rs. 20,96,82,219.17/-. The said amount is credited to the current account of the LICMF at Central Bank of India, Churchgate Branch, Mumbai.

13. It is the submission of the learned counsel for the CBI that the transaction, being merely on paper without physical possession of securities, based on the mis-representation, has resulted in un-lawful gain to Harshad Mehta, since deceased, as well as to the applicant, presumbly also, to the co- accused -Deosthali and that there is sufficient material on record to show the criminal intention on the part of the accused/ applicant involving him in the said offence of conspiracy and fraud and other like charges

and for implicating the accused in the said case.

14. On the other hand it is the case of the learned Advocate for the Applicant that Ready Forward Transactions effected by submission of contract notes and delivery orders issued by the buyers and sellors are a legally accepted mode of trading in shares.

15. In the present case, since LIC Mutual Fund wanted to invest their surplus funds for a period of 7 days, the said Applicants acted as brokers on behalf of the LICMF as well as on behalf of the Harshad Mehta and the entire transaction, admittedly, was conducted by the applicant through UCO Bank, wherein the Applicants as well as Harshad Mehta had their current accounts. It is pointed out that since LICMF had invested the money for a period of 7 days only, they requested for Bankers Receipt from UCO Bank instead of Blank endorsement on Bonds. The instructions of LICMF for accepting the Bankers Receipt instead of Bonds were only to avoid the transfer formalities since the period of transaction was only for 7 days.

16. According to the Applicant on the completion

of transaction on 9.7.1990, LIC Mutual Fund received an amount of Rs. 26,17,77,065.07/- and gained a sum of Rs. 5,51,037.97/- as profit for investment of its funds for a short period of 7 days, and UCO Bank received a commission of Rs. 57,500/- and V.B.Desai in turn earned a brokerage of Rs. 12,575/-. It is the contention of the Applicant, that the entire transaction was done in the normal course of business as an accepted mode of commercial transactions in the city of Bombay. It is further contended that the validity of such transaction has been specifically upheld by the judgment of this court, (Coram : S.N. Variava,J) in Misc. Application 53/1993, in Special Case wherein the court has observed in para 6 at page 207 as follows :-

> "I am unable to accept any of these submissions. In my view, it is surprising that a Nationalised Body like 1st Respondent should take up contentions which to this Court appear to be patently dishonest. The 1st Respondent is a financial institution. It is well known how transactions in securities are undertaken. The authority cited has no application to transactions in securities.

Transactions in securities are undertaken either by delivery of actual securities or on the basis of Bankers Receipt. When Bankers Receipt are given, distinctive numbers are seldom if ever mentioned. The Bankers Receipt normally mention only names of the contracting parties, the type of security , the face value, the rate and the total amount. 1st Respondent have annexed the Bankers Receipt in this case. It is a typical Receipt. To be noted that there is no column for distinctive numbers. Even though no distinctive numbers are mentioned, the Bankers Receipt clarify that the Securities named and of that faces value are thereafter, held on account of the purchaser. The Institution or Bank receiving the Bankers Receipt becomes entitled to the equivalent of the securities named in that Receipt. On the basis of the Bankers Receipt the purchasing Institute or Bank becomes entitled to deal with and further transfer the securities covered by the Bankers Receipt. It is the practice of the trade that the securities mentioned in the Bankers REceipt are ultimately delivered to the purchaser. In

these transactions very often the selling Institute or Bank may not have actual securities in their possession. They may themselves be holding only a Bankers Receipt. They may themselves be holding only a Bankers Receipt. This will not mention the distinctive numebrs of the securities which will finally be delivered against the Bankers Receipt. Yet on basis of the Bankers Receipt they are entitled to and do transfer that they have purchased. Such transactions, running into crores of Rupees, take place innumerable times every day only on basis of such Bankers Receipt. It is only finally at the end, that after adjustments, delivery of actual securities takes place.

17. The defence of both the Applicants is one and the same, viz. that they have acted as per Rules and Regulations of BSE and acted according to law and therefore, they are not guilty of having committed any offence. It is further submitted that the transactions effected by the Applicants, was as per the prevailing practice. B.R.s being public documents

issued in normal course of business, there can be no inference that BRs do not in fact represent the physical securities mentioned in the said B.R.s. and that since BRs are issued by the Bank, it is natural to assume that the B.R.s' are issued in lieu of transfer of physical possession of the securities.

18. It is pointed out that the Joint Parliamentary Committee and Janakiram's Committeee advance comments on the said practice of banks undertaking transactions on behalf of constients/ broker by using their routine accounts and using their B.R.s. and bankers' cheques in the deals, was in the context of the Securities Scam in 1992, and that the practice of issuing B.R.s prior to 26.07. 1991 was not considered to be illegal, improper or prohibited at that time. Learned Advocate Mr. Deshpande on behalf of the Applicant in CRA No. 121/2004 has contended that in case of Ready Forward Contract, if the ready leg is performed, the illegality of the formalities cannot effect the transfers which have already taken place and the observations of the joint parliamentary committee cannot effect the rights and liability of the Applicants retrospectively. Reference is made to the

decision in Ram Narain Poply vs. Central Bureau of Investigation, (AIR 2003 S.C. 2748), wherein it has been held that issuing of B.R prior to 26.7.1991, was not irregular and that there was no legal prohibition on issuing B.R.s in lieu of actual secutities.

19. Admitedly, the Applicants have carried out the transactions as per the prevailing practice. The applicants have admitted that it was only on the basis of the BRs contract notes and delivery notes that both the ready leg and forward leg of the ready- forward transactions had taken place between LIC MF and Harshad Mehta with the UCO Bank, acting as a conduit. In case of V.D. Desai, the broker, the monetary part of the transaction took place through the current account of V.B. Desai, with the UCO Bank. While in the case of the Applicant Krishnamachari, the transaction took place through UCO Bank's (Client Account), although the applicant Krishnamachari had a current account with the UCO Bank, the said transaction was not routed through his personal account. This difference between the two transactions by itself is not of much relevance. The fact remains that the purchase and sale of securities between LIC

Mutual Fund and Harshad Mehta in both the transactions took place through the UCO Bank, Hamam Street Branch, Mumbai, where Mr. Deosthali, the co-accused was the Assistant Branch Manager. It is the case of the prosecution, that Deosthali, was not authorised to issue B.R.s and he had no authority from the UCO Bank to act in the matter of issuing B.R.s, nor had he the authority to credit the account of the applicants with the funds received in both forward leg and ready leg transactions to the said Bank. The prosecution relies on the statement of witness Dinesh Mishra, who at the relevant time, was working as Dy. General Manager with UCO Bank. Mr. Mishra has stated that B.R.s could not be issued by Deosthali, co- accused as UCO Bank was not having any security with them. The said Mishra has by writing to the CBI, in-reply to the letter of CBI dated 18.05.1998, stated that Shri V.N. Deosthali was not authorised by the Head Office (T & IM), Department, to undertake deals of Sale of 13% NPC Bonds face value Rs.25 crores on 2.7.1990 and purchase of the same bonds on 9.7.1990 and sale of 9% NHPC Bonds face value of Rs. 20 crores on 31.7.1990 and purchase of the same bonds on 10.8.1990, which are subject matter of the present Revision Applications. The Head Office of UCO Bank, did not authorise Shri

Deosthali to issue BRs of UCO Bank, even in respect of securities deals of its clients.

20. Admittedly, co-accused Deosthali was instrumental in routing the transactions through the UCO Bank, by issuing BRs in lieu of physical delivery of the securities and issuing delivery notes to the parties, on the assumption that securities passed from the buyers to the sellors and on that basis the said securities were retained with the UCO Bank.

21. Admittedly, physical possession of securities did not pass to the buyers in either leg of the transactions. B.R.s were issued on the assumption that securities in fact, in physical form, were available with the Bank issuing the B.R.s. It is the case of the applicants that they were entitled to complete the transaction on the basis of B.R.s i.e. without physical transfer of the securities in view of the short period for which the transactions were undertaken and effecting physical transfer of the securities would be cumbersome and not practical and that this was being done as a matter of routine practice in regular course of business of trade by brokers dealing in securities. This is on the

assumption that the securities are in fact in existence. When B.R. s are issued, it is assumed that the securities was available or would be availabe as and when required by the Bank for production either to the buyers or sellors at any stage. Deosthali, the co- accused had issued these BRs on the representation that the securities in physical forms are available. Deosthali has issued the BRs although, he was not authorised to do so by the Bank. Deosthali has issued cost memos also. The applicant brokers have issued the delivery notes on the assumption that the securities were in existence. Whether the applicant brokers were in fact aware that the BRs and cost memos were issued by Mr. Deosthali in the absence of physical possession of the securities, so as to attract the charge of mis-representations, is a matter that can be decided only on the basis of evidence that would come on record at the time of trial. The prosecution places reliance on material on record which prima facie show that B.R.s were issued without any physical securities available with the Bank. Witness Smt. Bilimoria, Junior Executive in the Investment & Finance Dept., in the LIC Mutual Fund, has admitted that Receipt of BRs, which are kept in safe did not mean that the physical bonds were

received. Witness Dinesh Mishra, DGM of UCO Bank, has stated that the UCO Bank was not acting as depository for its clients, either in 1990 nor today and were not holding any type of securities on behalf of either Harshad S. Mehta, V.B.Desai or R.K. Chari and other brokers/ clients or the present applicants. Thus at no stage, the securities in physical forms were available with the Bank.

22. In the circumstances, it cannot be said that there is no material against the Applicants on record, attributing knowledge to them of the issue of BR in the absence of physical securities. It will be for the Applicants accused to rebut the presumption that they were aware of the non-existence of the securities, on the basis of which the aforesaid transactions have taken place and this can only be done at the trial. The learned Special Judge was, therefore, right in not allowing the discharge application filed by the Applicants. In view thereof, the present application also stands dismissed.

23. It will be open for the Applicants to substantiate their defence that they were acting only

in the normal accepted course of business and that they had no knowledge of the non- existence of the securities. Needless to say that the observations made in this order, will not in any way influence the trial court, which will decide the matter on its own merits.

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